

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

CITY OF RICHMOND POLICE DEPT.,)

and CITY OF RICHMOND,)

Plaintiffs,)

v.)

MORIAH KARN, *et al.*,)

Defendants.)

Case No.: CL12-4939

ORDER

On December 4, 2012, the Parties appeared, through counsel, for a hearing on the motion of Plaintiff City of Richmond Police Department (“RPD”) and the City of Richmond (“the City”) (collectively, the “Plaintiffs”), for entry of an Order enlarging the time that the Order Regarding Temporary Injunction (the “Injunction Order”) shall remain in effect and on the Motion of the Defendants Moriah Karn and Nathan Cox for the dissolution of the Injunction Order.

It appearing to the Court that certain documents (the “Documents”) originally found on a certain portable hard drive of the RPD (the “Hard Drive”) were made available to the public on <http://wingnutrva.org/>, which is the website of the Richmond Wingnut Collective, and <http://virginiacopblock.org/>, through the posting on those websites of certain links to Filebin.net identified in the Amended Complaint (the “Links”);

It appearing to the Court that the requirements for the temporary injunctive relief granted in the Injunction Order on are satisfied with respect to certain of the Documents made available on <http://wingnutrva.org/> and <http://virginiacopblock.org/> through the posting thereon of certain links to Filebin.net by Defendants and that no Constitutional or other basis exists for withholding injunctive relief as to such documents;

It further appearing to the Court that there are other Documents on the Hard Drive with respect to some of which imposition of the injunctive relief is appropriate and with respect to which no Constitutional or other basis exists for withholding injunctive relief;

It appearing to the Court, more specifically that the requirements for the temporary injunctive relief are met and no Constitutional or other basis exists for withholding injunctive relief, with respect to the following Documents Subject to Injunction:

(1) Documents containing personal contact information, such as names, home addresses, and cellular telephone numbers of officers and/or employees of the RPD and immediate family, including but not limited to, the following: First Precinct Alert Roster dated March 1, 2011; and Contact Numbers RPD – 1st Precinct Detective Unit, 10/20/2010; and

(2) Documents containing information about ongoing or completed police investigations reasonably sufficient to enable the discernment of the names of still confidential sources or informants to criminal activity, including but not limited to: Daily Activity dated Thursday, July 28, 2011; SID Precinct Report August 7-August 13, 2011 and August 21-August 236, 2011; a power point presentation the first page of which states in the upper right hand corner, “FMT Future Focus Mar 22-Apr 18, 2011”; a power point presentation the first page of which at the top center states “VIOLENT CRIME INITIATIVE”; a document titled SID Org Chart (collectively, the documents in categories (1) and (2) are referred to as the “Documents Subject to Injunction”); and

It appearing to the Court that the requirements for the temporary injunctive relief granted in the Injunction Order are not met with respect to the remainder of the Documents;

For the foregoing reasons and based on consideration of the briefs filed by the parties, oral arguments of counsel, the evidence proffered, and because it otherwise appears right and proper to do so, the Court hereby ORDERS that the Injunction Order is modified as follows.

The Court ORDERS that Defendants must refrain from sharing the Documents Subject to Injunction with any third party, other than their counsel, as required to comply with discovery requests of the Plaintiffs, or as otherwise permitted under future orders of this Court;

The Court ORDERS that Defendants must not make any copies (electronic copies or any other form of duplication of the information) of the Documents Subject to Injunction other than as required to provide copies to their attorney, comply with discovery requests of the Plaintiffs, or as otherwise permitted under future Orders of this Court;

The Court further ORDERS that the requirements of the Injunction Order are hereby dissolved with respect to the Documents that are not the Documents Subject to Injunction;

The Court further ORDERS that nothing in this Order shall preclude either party from in the future petitioning this Court to modify the terms of this Order;

The Court further ORDERS that if the Hard Drive is in any Defendant's possession, custody, or control, then that Defendant shall return it to the Court on or before December 7, 2012;


The Court further ORDERS that the injunctive relief granted herein shall remain in effect by and through the entry of a Final Order in this case, but that the Court will set a date for hearing of the Defendants' motion to dissolve the injunctive relief granted herein and a briefing schedule associated therewith; and

The Court further ORDERS that per Virginia Code §§ 8.01-631 and 15.2-1126, no bond is required.

The Clerk is directed to forward a copy of this Order to all parties.

IT IS SO ORDERED.

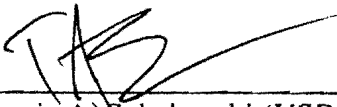
ENTER: 12/4/12



Gregory L. Rupe, Judge


A Copy,
Entered: **DEVILL M. EZAN, CLERK**
BY:  **D.C.**

SEEN AND OBJECTED FOR REASONS TO BE STATED
IN A SUBSEQUENT
SUBMISSION BY LEAVE
OF COURT:


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*Counsel for Plaintiffs City of Richmond Police
Department and City of Richmond*

SEEN AND OBJECT TO For the reasons stated in the attached: *The plaintiff
has been to open his chapter*


Thomas H. Roberts, Esq. (VSB 26014)
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Counsel for Defendants Moriah Karn and Nathan Cox

Objections of Defendants Cox and Karn

- 1) Defendants Karn and Cox object to this order for the reasons stated in their briefs, which are hereby incorporated, and on the record at the hearing held on November 27, 2012 and December 4, 2012, which are hereby incorporated.
- 2) Defendants Karn and Cox object to the hearing of Plaintiff's motions on November 27, 2012, on the grounds that the notice of the hearing did not provide reasonable notice of the same, have been filed on November 21, 2012, the day before the Thanksgiving holiday, setting the hearing within six days of the same, on November 27, 2012. Holding the hearing in this manner prejudices the Defendant's ability to defend themselves.
- 3) Defendants Karn and Cox object to the continuation and enlargement of this temporary injunction as a violation of their rights under the First, Fifth, and Fourteenth Amendments to the United State, and the Article I, § 12 of the Virginia Constitution, including but not limited to the right of free speech, the right of due process, and the right against self-incrimination.
- 4) The continuation of this injunction impermissibly chills the First Amendment rights of the Defendants, and the public at large in light of the incorporation of unidentified Doe defendants.
- 5) Defendants Karn and Cox object to this injunction as the facts alleged in the complaint and those presented at trial are insufficient to permit a reasonable inference that there would be irreparable injury to the plaintiffs as a result of the Defendants' (and thereby including, Cox's and Karn's) publication of the materials subject to the injunction, let alone their continued possession of the same.
- 6) Application of the balancing test proposed by the RPD mandates against the injunction, as the Plaintiffs have failed to adequately demonstrate the likelihood of irreparable injury; the temporary injunction would infringe the Defendants' First, Fifth, and Fourteenth Amendments to the United State, and the Article I, § 12 of the Virginia Constitution; the Plaintiffs are not likely to prevail on the merits in light of the heavy burden in overcoming the Constitutional challenges; and the public has an interest in transparency as manifest in the right of the public to access personnel documents of local law enforcement. See, e.g. Va. Code §§ 2.2-3700, -3706(g), (i), 15.2-1722.
- 7) Compelling the defendants to return documents to the court prior to judgment and without the safeguards of the prejudgment seizure and attachments law is in violation of the Virginia law and the right to due process.
- 8) It is abuse of the Court's discretion for the Court to be satisfied of the plaintiff's equity in this matter.
- 9) The posting of a bond is required under state law for this injunction to have effect.
- 10) The injunction is too vague to give the defendants fair warning what they may do, may not do, and must do. *→ Specifically, but not limited to ¶ 1 - "The disclosure... and/or employees"*
- 11) The motion to show cause was improper, as the defendants were not subject to the jurisdiction of the Court at the time of the motion, and therefore the motion should be dismissed forthwith. *and ¶ 2 "still Confidential sources or informants"*
- 12) The motion to show cause fails to articulate any conduct that was or is in violation of the court's orders, and therefore should be dismissed forthwith.
- 13) The order to seal the court records was directed only to the clerk, not to the defendants, and therefore does not bind the defendants.

- 14) The order to seal the court records did not comply with the procedures established for such motions and orders by the Virginia Supreme Court, and therefore was not effective.
- 15) The conduct of the defendants at all times was protected by the First Amendment and the Virginia Constitution Article I, § 12.
- 16) Failure to "return" the so-called "Confidential Information" to the court was not a violation of the injunction, under the due process clause and the Fifth Amendment, and insofar as the material was not in the possession of Karn and Cox.
- 17) The motion to show cause was not ripe.
- 18) The findings of the court are not supported by evidence or the pleadings, and no evidence was taken at the hearing of November 27, 2012.
- 19) The order impermissibly makes Karn and Cox subject to criminal and civil liability for the conduct of the other and/or third-party defendants, including unidentified defendants not subject to the jurisdiction of the Court.
- 20) The temporary injunction granted by the Court in this matter exceeds the scope of the temporary injunction requested in the Complaint and the Amended Complaint.
- 21) *The Factual Findings made herein are not supported by the record*
- 22) *The proffer of evidence is insufficient to support a temporary injunction.*
- 23) *The temporary injunction exceeds the scope of the relief requested in the Amended Complaint/Complaint.*
- 24) *No evidence was proffered at the hearing of Nov. 27, 2012.*
- 25) *Evidence proffered at the Nov. 16, 2012 hearing and the ~~the~~ Dec. 4, 2012 hearing was improperly proffered without ^{reasonable} notice and/or without defendants' presence*
- 26) *Defendants are prejudiced by the failure ~~to~~ of the court ~~to~~ and the Plaintiffs to introduce the documents presented ^{at the ex parte} ~~to the court~~ hearing of Nov 16, 2012*